

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Yasmeen Al-Farouk,

Case No. 2:23-cv-01372-CDS-MDC

Plaintiff

Order Granting Defendants' Motion to Dismiss

V.

Kristine Nelson, et al.,

[ECF Nos. 25, 26, 33]

Defendants

9 Pro se plaintiff Yasmeen Al-Farouk's Second Amended Complaint (SAC) seeks damages
10 from defendants Nevada, Nevada Department of Employment, Training and Rehabilitation
11 (DETR) Security Division (ESD), and current DETR ESD Administrator Kristine Nelson, former
12 DETR ESD Administrator Lynda Parven, DETR Director Christopher Sewell, DETR Board of
13 Review Chairman Thomas Susich, DETR ESD Appeals Referee Jorge Ceballos,¹ Nevada
14 "Attorney General/DETR ESD Attorney" Aaron Ford, "Deputy Attorney General/ DETR ESD
15 Attorney" Todd M. Weiss, attorney Jen Sarafina, and Nevada Governor Joseph Lombardo, in
16 their personal² capacities. SAC, ECF No. 9 at 1–3. Specifically, she brings a 42 U.S.C. § 1983
17 claim alleging that defendants denied her procedural due process when she sought Pandemic
18 Unemployment Insurance (PUA) from DETR. *Id.* at 7. Defendants Nevada, DETR, Nelson,
19 Parven, Ceballos, Susich, Sewell, Sarafina, Ford, Weiss, and Lombardo³ filed a motion to dismiss
20 Al-Farouk's claims. Mot. to dismiss, ECF No. 25 at 1–2. Defendants also list Deputy Attorney
21 General Jordan K. Laub, who is representing defendants, as a party to the motion, although he

¹ Defendant Jorge Ceballos was added to the case after the filing of the motion to dismiss. ECF No. 31. Because the claims against him arise out of the same set of facts, his motion for joinder (ECF No. 33) to the other defendants' motion to dismiss (ECF No. 25) and request for judicial notice (ECF No. 26), as well as his waiver of service, is granted.

² Al-Farouk's claims against the individual defendants in their official capacities were already dismissed. Order on R&R, ECF No. 13 at 3–4.

³ Although Weiss and Lombardo were not listed as parties to the motion to dismiss, the court notes that defendants filed a notice of errata (ECF No. 29) explaining that they were inadvertently omitted. I therefore recognize them as parties to the motion.

1 was not included as a defendant in the SAC. *Id.* In their motion, defendants raise a series of
 2 arguments under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), including that no
 3 federal claim is stated, that the claims are barred by the *Rooker-Feldman* doctrine, that Al-
 4 Farouk's claims are insufficiently pled, that the complaint is subject to claim preclusion and
 5 issue preclusion, and that the defendants are subject to qualified immunity. *Id.* Defendants
 6 separately request judicial notice under Federal Rule of Evidence 201 of a series of judicial
 7 records from two prior actions in the state courts of Nevada (Case Nos. A-22-846800-W and A-
 8 22-857898-J). Request for jud. notice, ECF No. 26.⁴ Al-Farouk filed a response in opposition to
 9 the motion to dismiss. Opp'n, ECF No. 35. Defendants replied. Reply, ECF No. 38. Several days
 10 after the reply, Al-Farouk filed a motion to amend her response. ECF No. 39. She then filed her
 11 amended response several weeks later, despite not having been granted leave from the court.
 12 ECF No. 43. I nonetheless granted her motion (ECF No. 46) and permitted defendants to submit
 13 an additional reply, which they did (ECF No. 47). Because I find that Al-Farouk's claims against
 14 the individual defendants have not been adequately pled, and her claims against Nevada and
 15 DETR ESD are precluded, I grant defendants' motion to dismiss.

16 I. Background⁵

17 Al-Farouk filed a claim for Pandemic Unemployment Insurance (PUA) with Nevada's
 18 DETR in summer 2020. ECF No. 9 at 8. She received a "Monetary Determination confirming
 19 eligibility pursuant to Section 2102 of the CARES Act of 2020 applicable federal regulations at
 20 20 CFR, Part 625" on July 31, 2020. *Id.* Her demonstration of eligibility was based on "self-
 21 certification, income verification in the form of 1099, client bank account payment report, tax
 22 filings Identity verification in the form of front and back copies of Nevada drivers license along

23 ⁴ I grant defendants' request for judicial notice of the order denying Al-Farouk's petition for judicial
 24 review, the answer to the petition for judicial review, Al-Farouk's opening brief in support of her petition
 25 for judicial review, Al-Farouk's petition for judicial review, and Al-Farouk's petition for writ of
 mandamus. ECF No. 26; *see Intri-Plex Techs. Inc. v. Crest Grp., Inc.*, 499 F.3d 1048, 1052 (9th Cir. 2007). I also
 consider the documents attached to Al-Farouk's complaint as exhibits.

26 ⁵ Unless otherwise noted, the court only cites to Al-Farouk's SAC (ECF No. 9) to provide context to this
 action, not to indicate a finding of fact.

1 with a picture of Plaintiff holding drivers license, social security card, Medicare card, bank
2 account statements, . . . utility bills[,]” and a letter from her client confirming separation due to
3 COVID-19 pandemic. *Id.*

4 In February and March 2021, having not heard anything from DETR, Al-Farouk
5 contacted Former Nevada Governor Steve Sisolak and Congressman Steven Horsford seeking
6 resolution of her claims. *Id.* at 9; Pl.’s Ex. 10, ECF No. 9-1 at 31–33. Al-Farouk also contacted
7 Lynda Parven, “Administrator, and of the Office of the Administration[,]” in March 2021 and
8 received no response. ECF No. 9 at 9; ECF No. 9-1 at 31–33. She alleges that Parven, “acting
9 under color of law, was a party to Plaintiff’s legal complaints and pursued legal defense rather
10 than resolution of payment of valid claim.” ECF No. 9 at 9.

11 Al-Farouk did not hear anything following the initial determination until March 27,
12 2021, at which time she was told she had forty-eight hours to provide proof of her 2019 wages,
13 proof of “how you are COVID affected and how that relates to you being unemployed,” and a
14 copy of her bank statement. ECF No. 9 at 8; Pl.’s Ex. 4, ECF No. 9-1 at 17. Al-Farouk was told
15 that if she did not respond within forty-eight hours, “a determination will be made based on the
16 information we have on file.” ECF No. 9-1 at 17. Al-Farouk does not allege that she submitted the
17 requested information in the forty-eight-hour window.

18 Benefits were denied on March 31, 2021. ECF No. 9 at 8; Pl.’s Ex. 5, ECF No. 9-1 at 18. The
19 benefits denial letter stated that Al-Farouk failed to show that her “employment separation is
20 due to the COVID-19 pandemic” and noted that she had the right to appeal the denial. ECF No.
21 9-1 at 19. Al-Farouk appealed the benefits denial the same day, stating that “[d]enial is
22 nonspecific and states I don’t qualify with no mention of which qualification I am lacking.” ECF
23 No. 9 at 8; Pl.’s Ex. 6, ECF No. 9-1 at 21–23. She did not hear back regarding her appeal until
24 August 13, 2021, when she was again given forty-eight hours to attach a current utility bill and
25 all pages of her 2019 and 2020 taxes. ECF No. 9 at 8; Pl.’s Ex. 7, ECF No. 9-1 at 25. Al-Farouk was
26 told that if she did not respond within forty-eight hours, “a determination will be made based on

1 the information we have on file." ECF No. 9-1 at 25. Al-Farouk again does not allege that she
2 submitted the requested information in the forty-eight-hour window. On January 13, 2022, Al-
3 Farouk received a "Notice of Invalid Appeal" stating that "[a]fter reviewing the appeal, it has
4 been determined this appeal is invalid because you are making a statement and did not provide a
5 specific reason for filing an appeal on the non-monetary determination." ECF No. 9 at 9; Pl.'s Ex.
6 9, ECF No. 9-1 at 29.

7 On January 18, 2022, Al-Farouk filed a petition for a writ of mandamus in Nevada state
8 court. ECF No. 9 at 9. Following the invalid appeal determination, DETR scheduled a hearing
9 for March 9, 2022. *Id.* Al-Farouk states that she declined participation "as legal action was under
10 way and under the assumption that administrative failures constituted a default." *Id.* "[T]he
11 Judge in the Writ [of Mandamus] Petition forced Plaintiff in his Order to exhaust all of DETR
12 administrative instruments, including an appeals hearing, next level appeal to the DETR Board,
13 and Judicial Review." *Id.*

14 She accuses writ of mandamus respondents Weiss and Ford, who sought a motion for
15 reconsideration/rehearing in that action, of "committing fraud in defense of denial of benefits"
16 because their motion stated "Petitioner was deemed ineligible for program benefits on March 30,
17 2021, due to failure to demonstrate genuine attachment to the Nevada labor market and/or that
18 her unemployment was related to or the result of the COVID-19 pandemic" because they "must
19 have been aware that their defense of 'Failure to Demonstrate attachment to Nevada labor
20 market', was false, fraudulent, and a fabricated assertion with no basis in unemployment law."
21 *Id.* at 9–10; Pl.'s Ex. 11, ECF No. 9-1 at 34. Al-Farouk takes exception to this statement
22 specifically, citing to a document she identifies as a "Special Masters Report Introduction and
23 guidance regarding 'Location'" which appears to be four pages from an introduction and one
24 page from far later in a 310-page filing by a special master in some unidentified legal context. Pl.'s
25 Ex. 12, ECF No. 9-1 at 38–42. The special master appears to have been an attorney, describing
26 that the special master is "grateful for the hard work and contributions of his colleagues and

1 staff at Hutchison & Steffen, PLLC." *Id.* at 41. According to this otherwise-unidentified
 2 document:

3 Claimants need not be in Nevada at the time of filing so long as they are able and
 4 available for work. Individuals must file for PUA in the state where he or she was
 5 working at the time of becoming unemployed, partially unemployed, or unable or
 6 unavailable to work because of a COVID-19 related reason listed in the CARES Act
 7 statute and the Department's guidance. If an individual worked in more than one
 8 state at the time, the individual may file in any of those states.

9 *Id.* at 42. She alleges that because the special master "met with DETR representatives in person
 10 and by phone[,"] defendants Ford and Weiss were aware of, and chose to ignore, the
 11 "[g]uidelines[.]" ECF No. 9 at 10; Pl.'s Ex. 13, ECF No. 9-1 at 44-45.

12 On July 27, 2022, Al-Farouk states that she attended an appeal hearing "forced by order
 13 of the Court" and at which defendant Ceballos served as appeal referee. ECF No. 9 at 10-11. She
 14 alleges that Ceballos "conducted a fraudulent hearing lacking a specific reason for denial to be
 15 vetted. Denial was broad and non-specific alleging Plaintiff did not 'meet the qualifications
 16 required by" the CARES Act for PUA. *Id.* at 11. She states that the appeals process was nothing
 17 "but a fishing expedition in search of a reason to deny benefits" and that Ceballos, "acting under
 18 color of law, admitted to Plaintiff upon inquiry that he did not know which specific criteria was
 19 not met causing denial." *Id.* The exchange to which Al-Farouk refers appears as follows:

20 Al-Farouk: Can you tell me exactly which qualification or qualifications it is
 21 that I don't meet.

22 Ceballos: So that's what we have this hearing for to determine if that
 23 disqualification was issued correctly or incorrectly. I can just read
 24 you the disqualification that's on file, which you already have.

25 Al-Farouk: Yeah, no. I don't need you to do that. It was just that that was very
 26 broad. It was not specific. It said you don't meet the qualifications,
 27 but it never stated exactly which qualifications I did not meet. And
 28 it seems if though if I'm getting a notification that I'm not qualified,
 29 that there should be something on file saying exactly what I'm not -
 30 - why. What qualifications I didn't meet. So you're determining that
 31 now. At the time that I got that notice, there was actually no

1 determination on exactly which qualification I didn't meet. Am I
 2 understand that correctly?

3 Ceballos: So it was issued by the claim center, so the claim's department.

4 Al-Farouk: Oh, so you wouldn't know.

5 Ceballos: Correct.

6 Appeal hr'g tr., Pl.'s Ex. 14, ECF No. 9-1 at 49. The ultimate finding of the referee, made on
 7 August 5, 2022, was that Al-Farouk last worked on May 1, 2020. Appeal referee decision, Pl.'s
 8 Ex. 15, ECF No. 9-1 at 51–52. The rendered decision stated the following:

9 The claimant testifies that she was working in Hawaii and in October of 2019 she
 10 had a family emergency, so she relocated to Nevada. She affirms she continued to
 11 work remotely from the state of Nevada, but she was performing services for the
 12 company that was located in the state of Hawaii. The claimant testifies that she
 13 was supposed to return to Hawaii, but due to the pandemic she was unable to
 14 return as planned. She eventually had to train her replacement, and she was let go
 15 as she was unable to relocate back to Hawaii. **Although the claimant resided in**
 16 **Nevada, the preponderance of evidence clearly establishes that the claimant's**
 17 **employment and job-attachment was in the state of Hawaii. The claimant did**
 18 **not have an attachment to the Nevada Labor Market therefore she did not**
 19 **experience job loss in Nevada.**

20 *Id.* at 51 (emphasis added). The decision made no mention of due process. *See id.*

21 Al-Farouk then appealed the decision to the Nevada State PUA Board of Review, for
 22 which defendant Susich serves as chairperson, and the Board declined further review. ECF No. 9
 23 at 11; Pl.'s Ex. 16, ECF No. 9-1 at 54–56.

24 After this denial again, Al-Farouk petitioned for judicial review of the decision in the
 25 Eighth Judicial District Court of Clark County, Nevada, before Judge Anna Albertson. ECF No.
 26 9 at 11. In her opening brief, she repeatedly raised the issue of Fourteenth Amendment Due
 27 Process as a core element of her petition. Opening br., ECF No. 26-3 at 7, 9, 11, 13, 14, 16, 18. Her
 28 due process complaints largely arose out of the lengthy delays in the adjudication of her PUA.
 29 *See, e.g., id.* at 11 (“Claims Adjudicator violated . . . the Due Process Clause of the 14th Amendment
 30 by not acting promptly in disbursing PUA benefits”); *Id.* at 14 (“Appeals Adjudicator

1 violated . . . the Due Process Clause of the 14th Amendment due to the length of time that had
 2 transpired when the hearing was scheduled."); *Id.* at 16 ("The appeals Referee Violated . . . Due
 3 Process by Not scheduling a Hearing on Petitioner's appeal for more a year after the appeal."). In
 4 the hearing before Judge Albertson, Fourteenth Amendment Due Process was only briefly
 5 discussed. This included the following exchange:

6 MS. AL-FAROUK: The only other thing I would ask Your Honor and your -- is in
 7 terms of -- in my opening brief. Even before we got to the referee, everything that
 8 was done before then, am I to understand that that has -- that has no consideration,
 9 the violation of 14th Amendment due process rights? The violation of even the
 chapter 612, the fact that my claim was in limbo for close to a year before anything
 happened and everything that happened, I had to force. So are those actions not
 addressed at all?

10 THE COURT: I understand your frustration but what's before me today is a
 11 petition for judicial review, where I review the decision and decide it -- whether
 12 I'm --

13 MS. AL-FAROUK: Oh, just the decision.

14 THE COURT: Yeah, I don't get to review some of the other stuff that you put in
 15 front of me.

16 July 25, 2023 Jud. rev. hr'g tr., ECF No. 35-1 at 49. At other points, when Al-Farouk attempted to
 17 introduce other information, Judge Albertson stated "I'm not allowed to review additional
 18 information. I'm not allowed to take in additional information" and "[m]y job, as I look at these,
 19 these are petitions for judicial review, is very limited. I'm limited to the record that's in front of
 20 me. I don't get to review additional information." *Id.* at 46, 48.

21 Judge Albertson ultimately signed an order denying Al-Farouk's petition because
 22 "whether she returned to Hawaii to work for the Hawaiian company or stayed in Nevada to
 23 work for the Hawaiian company, there was never an attachment to the Nevada labor market."
 24 ECF No. 9 at 11; Albertson order, Pl.'s Ex. 17, ECF No. 9-1 at 61. Fourteenth Amendment due
 25 process was not mentioned in the order. *See* ECF No. 9-1 at 59–62. Al-Farouk does not pursue
 26 claims against Judge Albertson but instead defendant Sarafina, the DETR attorney who

1 submitted the proposed order, for “repeat[ing] the false and baseless assertions of Referee
 2 Ceballos, attorneys for DETR Weiss and Ford, ‘failure to demonstrate attachment to the Nevada
 3 Labor Market’ in the decision to deny appeal.” ECF No. 9 at 11. She states that Parven, Nelson,
 4 and Sewell⁶, as leaders of DETR, “have an oversight and fiduciary duty ensuring the Department
 5 is in compliance with both State and Federal laws” but they “repeatedly disregarded
 6 unemployment law and statutory mandates as a matter of policy as evidenced by a six-month
 7 (6) backlog of current claims . . . despite the emergency unemployment assistance ending two
 8 (2) years ago in September of 2021.” *Id.* (citing “February 28, 2023 KLAS TV 8 News Now
 9 interview with Director Sewell”). She alleges that Governor Lombardo has “an oversight and a
 10 fiduciary duty to ensure all Agencies including DETR are in compliance with both State and
 11 Federal laws.” Al-Farouk did not appeal Judge Albertson’s order. She states:

12 Plaintiff did not pursue an appeal with the Supreme Court because she understood
 13 the next step after the Judicial Review was to return to the Court for the Writ
 14 Petition. This is what Plaintiff was told by Judge and should be reflected in the
 15 transcript of the last hearing. The Writ Petition confusing dismissal coming before
 16 the conclusion of the Judicial Review, left Plaintiff confused as to the next steps.
 The Plaintiff did not understand this to be an option and frankly was too
 emotionally exhausted to pursue further litigation, especially what is now known
 to be the deadline for filing.

17 ECF No. 35 at 4. Nowhere in the hearing transcript is appeal procedure discussed. *See* ECF No.
 18 35-1. After thorough review, I also cannot find any language in the hearing transcript, from Judge
 19 Albertson, opposing counsel, or Al-Farouk herself, suggesting that continued pursuit of the writ
 20 of mandamus petition was Al-Farouk’s recourse following Judge Albertson’s denial.

21 Al-Farouk now brings claims against defendants under 42 U.S.C. § 1983 for violation of
 22 her Fourteenth Amendment procedural due process rights for excessive delays in the
 23 adjudication of her claims, pointing to the eight-month delay between her award of benefits, the
 24 more-than-a-year wait before she was given a hearing on her appeal, and the email notifying her

25
 26 ⁶ Although Al-Farouk refers to Sewell as “Thomas Sewell,” the court will construe this as a scrivener’s
 error and that she intended to make allegations against defendant Christopher Sewell. *See* ECF No. 9 at
 11.

1 she had forty-eight hours to submit additional documentation. *Id.* at 12. She also alleges that
 2 DETR failed to follow its own protocol,⁷ which ostensibly states:

3 Individuals who have an existing PUA claim as of December 27, 2020, . . . and who
 4 receive PUA on or after December 27, 2020, must provide documentation within
 5 90 days of the application date or the date the individual is instructed to provide
 6 such documentation by the state agency (whichever date is later).

7 *Id.* at 8; Pl.'s Ex. 8, EF No. 9-1 at 27 (emphasis added). She argues she was denied due process
 8 because she was only given forty-eight hours to respond to the request for additional
 9 documentation, and ultimately had her claim denied. ECF No. 9 at 8. She also alleges that
 10 defendants failed to adhere to the mandate of the CARES Act in adjudicating their decision,
 11 which states that “[i]ndividuals must file for PUA in the state where he or she was working at
 12 the time of becoming unemployed, partially unemployed, or unable or unavailable to work
 13 because of a COVID-19 related reason listed in the CARES Act statute and the Department's
 14 guidance.” *Id.* at 10, 12–13 (citing ECF No. 9-1 at 38–42). She also raises claims for negligence and
 15 fraud against defendants. *Id.* at 13–14.

16 Al-Farouk seeks the “maximum amount of monetary remedy available for damages that
 17 occurred under U.S. Code 42 1983,” punitive damages in excess of \$100,000, and \$100,000.00
 18 under Nevada’s sovereign immunity waiver law (Nev. Rev. Stat. § 41.031) for unemployment
 19 insurance fraud and negligence. *Id.* at 14. Defendants, in their motion, argue that Al-Farouk’s
 20 claims should be dismissed under Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6), as well
 21 as qualified immunity. ECF No. 25.

22
 23
 24 ⁷ The document to which Al-Farouk cites has the “EmployNV” heading and is marked from
 25 “POSTMASTER” and sent on April 23, 2021. Pl.'s Ex. 8, ECF No. 9-1 at 27. Although it is not clear to the
 26 court who produced this document or why, because its authenticity is not currently contested, the court
 will assume its validity and consider it. *Garrido v. Beall Corp.*, 2010 WL 5129699, at *1 (D. Or. Dec. 10, 2010)
 (“[A] district court may consider documents specifically referenced in the complaint, assuming the
 documents’ authenticity is not contested.” (citing *Cooper v. Pickett*, 137 F.3d 616, 622 (9th Cir. 1998))).

1 II. Discussion

2 A. Defendants' Fed. R. Civ. P. 12(b)(1) arguments

3 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) challenges a court's
4 subject matter jurisdiction. Pursuant to 12(b)(1), a motion to dismiss for lack of subject matter
5 jurisdiction will be granted if the complaint fails to allege sufficient facts to establish
6 jurisdiction. See *Savage v. Glendale Union High Sch. Dist. No. 205*, 343 F.3d 1036, 1039 n.2 (9th Cir.
7 2003). In considering a 12(b)(1) motion, the court is not restricted to the face of the pleadings
8 but may review any evidence to resolve factual disputes concerning the existence of jurisdiction.
9 *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988).

10 *I. Al-Farouk asserts a federal claim.*

11 Defendants first assert that this court lacks jurisdiction over Al-Farouk's claims because
12 Al-Farouk fails to assert a federal claim under *Gunn v. Minton*, 568 U.S. 251 (2013), which applied
13 the *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005)
14 ("*Grable*") test. Under the *Grable* test, "federal jurisdiction over a state law claim will lie if a
15 federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of
16 resolution in federal court without disrupting the federal-state balance approved by Congress."
17 *Grable*, 545 U.S. at 258.

18 *a. The federal claim is necessarily raised.*

19 According to defendants, Al-Farouk's federal claim under 42 U.S.C. § 1983 has not been
20 necessarily raised because her claim "is based on the denial of her eligibility for state-
21 administered PUA benefits through the administrative and judicial processes of the State of
22 Nevada, and not the violation of any federal constitutional right." ECF No. 25 at 5. They assert
23 that the action she maintains is "a state-law dispute of *eligibility* determination disguised as a
24 federal claim, and the Court lacks federal-question jurisdiction." *Id.* (emphasis in original). A
25 federal issue is necessarily raised where a state-law claim hinges on its adjudication. *Gunn*, 568
26 U.S. at 258.

1 In her SAC, Al-Farouk states that her alleged property interest in the benefits was
2 deprived because her “PUA benefits remained unpaid for eight months (8) before denial of
3 benefits and have never been paid.” ECF No. 9 at 12. Al-Farouk’s claim for violations of the
4 Fourteenth Amendment thus appear to be twofold. To the extent that she is seeking for this
5 court to review her eligibility for benefits using § 1983, I agree with defendants that this is a state
6 law claim and is not “necessarily raised.” *See Watkins v. Consol. Eng’g Lab’ys Inc.*, 2015 WL 4545847,
7 at *4 (D. Haw. July 27, 2015) (finding no state law issue was necessarily raised even though the
8 claims were premised on § 1983). There is no remaining federal issue when it comes to her
9 benefits, which were administered (and adjudicated) by the state. Therefore, I grant defendants’
10 motion to dismiss to the extent that Al-Farouk is attempting to relitigate her benefits eligibility.
11 Because amendment is futile, dismissal is granted with prejudice.

12 However, Al-Farouk’s other claim—the length of time she waited for adjudication of her
13 claims—potentially raises a Fourteenth Amendment due process issue independent entirely
14 from the state law claim for benefits. The Supreme Court has recognized that “the possible
15 length of wrongful deprivation of . . . benefits is an important factor in assessing the impact of
16 official action on . . . private interests.” *Fusari v. Steinberg*, 419 U.S. 379, 389 (1975). “Thus in *Fusari*,
17 the Court found that excessive delay in the adjudication of claims for unemployment benefits,
18 during which time benefits were withheld, could yield a deprivation in its own right regardless
19 of whether benefits were ultimately restored.” *Veterans for Common Sense v. Shinseki*, 644 F.3d 845,
20 873 (9th Cir. 2011), *opinion vacated on reh’g en banc*, 678 F.3d 1013 (9th Cir. 2012). In *Cleveland Board of
21 Education v. Loudermill*, the Supreme Court reasoned that “[a]t some point, a delay in [a] post-
22 termination hearing would become a constitutional violation,” though that point had not been
23 reached in that case. 470 U.S. 532, 547 (1985); *see also Barry v. Barchi*, 443 U.S. 55, 66 (1979) (“[I]t
24 was necessary that Barchi be assured a prompt post-suspension hearing, one that would proceed
25 and be concluded without appreciable delay. Because the statute as applied in this case was
26 deficient in this respect, Barchi’s suspension was constitutionally infirm under the Due Process

1 Clause of the Fourteenth Amendment.”). Indeed, “at some point delay must ripen into
 2 deprivation, because otherwise a suit alleging deprivation would forever be premature.” *Schroeder*
 3 v. City of Chicago, 927 F.2d 957, 960 (7th Cir. 1991). I thus find that Al-Farouk’s § 1983 Fourteenth
 4 Amendment due process claim is a necessarily raised federal issue.

5 ***b. The remaining Gunn factors likewise support jurisdiction.***

6 Defendants assert that the federal issue is not “actually disputed” because Al-Farouk is
 7 suing over denial of state unemployment benefits, that her “eligibility determination” is not a
 8 “substantial” federal issue, and that exercising jurisdiction would disrupt the Federal-State
 9 balance because “[e]nsuring that benefits are not paid to ineligible claimants is critically
 10 important to the administration of the PUA program” ECF No. 25 at 6–8 (citing *Gunn*, 568
 11 U.S. at 260 and *Grable*, 545 U.S. at 308). To the extent that Al-Farouk’s Fourteenth Amendment
 12 claim arises out of the substantial delays she faced, I disagree.

13 The Fourteenth Amendment Due Process Clause prohibits state action that deprives a
 14 person of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1. Thus,
 15 to state a claim under the Fourteenth Amendment, a plaintiff must show that it was state action
 16 that deprived her of due process. *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 156 (1978); *Apao v. Bank of*
 17 *N.Y.*, 324 F.3d 1091, 1095 (9th Cir. 2003). The test for state action is “not state involvement, but
 18 rather is significant state involvement.” *Adams v. S. California First Nat. Bank*, 492 F.2d 324, 330, n.14
 19 (9th Cir. 1974). Here, there is unquestionably state involvement, and defendants do not deny
 20 this fact. See ECF No. 25 at 6 (“Plaintiff’s claim under 42 U.S.C. § 1983 is . . . premised on . . .
 21 dissatisfaction with the outcome of Nevada’s adjudication of her benefits claim.”). That federal
 22 courts have federal question jurisdiction over Fourteenth Amendment due process claims is
 23 hardly new law. In *Raymond v. Chicago Union Traction Co.*, 207 U.S. 20, 20 (1907), the Supreme
 24 Court held that a claim arising out of the actions of a state entity that violated the provisions of
 25 the Fourteenth Amendment “by taking property without due process of law and by failing to
 26 give equal protection of the law, a federal question was presented ‘beyond all controversy.’” S.

1 *California Tel. Co. v. Hopkins*, 13 F.2d 814, 818 (9th Cir. 1926), *aff'd sub nom. Hopkins v. S. Cal. Tel. Co.*, 275
 2 U.S. 393 (1928) (quoting *Raymond*, 207 U.S. at 20). Although defendants insist that Al-Farouk's §
 3 1983 claim is premised "on dissatisfaction with the outcome of Nevada's adjudication of her
 4 benefits claim," I find that she has sufficiently brought a separate claim under the Fourteenth
 5 Amendment for violation of due process due to the delays she faced.

6 Defendants also assert that Al-Farouk's claim would disrupt the Federal-State balance
 7 because "Nevada has already fully adjudicated Plaintiff's claims through its state administrative
 8 and judicial systems." ECF No. 25 at 8. As discussed at length below, I find that Al-Farouk's due
 9 process claim as to the delay was never decided on the merits.

10 Therefore, I find that *Gunn* and *Grable* are not applicable, and the federal question has
 11 been properly raised.

12 **2. *Al-Farouk's Fourteenth Amendment due process delay claims are not barred***
 13 ***by the Rooker-Feldman doctrine.***

14 Having determined that Al-Farouk's Fourteenth Amendment due process claim based on
 15 the delays in process is the only claim that remains, I turn and address defendants' arguments
 16 that the *Rooker-Feldman* doctrine applies here. The *Rooker-Feldman* doctrine applies to "cases
 17 brought by state-court losers complaining of injuries caused by state-court judgments rendered
 18 before the [federal] district court proceedings commenced and inviting [federal] district court
 19 review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280,
 20 284 (2005). "The *Rooker-Feldman* doctrine merely recognizes that 28 U.S.C. § 1331 is a grant of
 21 original jurisdiction and does not authorize district courts to exercise appellate jurisdiction over
 22 state-court judgments, which Congress has reserved to" the U.S. Supreme Court. *Verizon Md., Inc.*
 23 *v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 644 n.3 (2002). "The doctrine has no application to
 24 judicial review of executive action, including determinations made by a state administrative
 25 agency." *Id.*

1 “It is a forbidden *de facto* appeal under *Rooker-Feldman* when the plaintiff in federal
2 district court complains of a legal wrong allegedly committed by the state court and seeks relief
3 from the judgment of that court.” *Noel v. Hall*, 341 F.3d 1148, 1163 (9th Cir. 2003). “First, the
4 federal plaintiff may complain of harm caused by a state court judgment that directly withholds
5 a benefit from (or imposes a detriment on) the federal plaintiff, based on an allegedly erroneous
6 ruling by that court.” *Id.* “Second, the federal plaintiff may complain of a legal injury caused by a
7 state court judgment, based on an allegedly erroneous legal ruling, in a case in which the federal
8 plaintiff was one of the litigants.” *Id.* “On the other hand, where the federal plaintiff does not
9 complain of a legal injury caused by a state court judgment, but rather of a legal injury caused by
10 an adverse party, *Rooker-Feldman* does not bar jurisdiction.” *Id.* In essence, the *Rooker-Feldman*
11 doctrine applies only in cases where the plaintiff, having lost in state court, seeks *de facto* appeal
12 in federal court arguing that the state court decision was *wrong*. *See id.* at 1164; *Exxon Mobil Corp.*,
13 544 U.S. at 284 (“If the state-court decision was wrong, the [Rooker] Court explained, ‘that did
14 not make the judgment void, but merely left it open to reversal or modification in an appropriate
15 and timely appellate proceeding.’” (quoting *Rooker v. Fidelity Tr. Co.*, 263 U.S. 413, 415 (1923))).

16 Here, Al-Farouk’s remaining claim is that her Fourteenth Amendment due process rights
17 were violated by the length of delay in the ultimate adjudication of her benefits claim. Al-Farouk
18 did present this argument to the state court, but the state court judge declared that she did not
19 have jurisdiction to hear this claim, explaining that the only issue she could consider was the
20 merits of Al-Farouk’s appeal. *See* July 25, 2023 Jud. rev. hr’g tr., ECF No. 35-1 at 46, 48, 49. As I
21 detail below, the state court *did* have the ability to consider Al-Farouk’s Fourteenth Amendment
22 due process claim. However, the *Rooker-Feldman* doctrine is inapplicable here because Al-Farouk,
23 in her SAC, is not alleging that the Nevada district judge applied the law incorrectly—at least in
24 regard to her due process claim arising out of the delays she faced. Instead, because the Nevada
25 district judge only made a jurisdictional—and not a merits-based—decision on Al-Farouk’s due
26 process delay claim, Al-Farouk brings this claim anew, not as an appeal. Therefore, because Al-

1 Farouk is not seeking redress for a “legal wrong allegedly committed by the state court” as to
2 this remaining issue, the *Rooker-Feldman* doctrine is inapplicable. *See Noel*, 341 F.3d at 1163.

3 B. Defendants’ Fed. R. Civ. P. 12(b)(6) arguments

4 The Federal Rules of Civil Procedure require a plaintiff to plead “a short and plain
5 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).
6 Dismissal is appropriate under Rule 12(b)(6) when a pleader fails to state a claim upon which
7 relief can be granted. Fed. R. Civ. P. 12(b)(6); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A
8 pleading must give fair notice of a legally cognizable claim and the grounds on which it rests,
9 and although a court must take all factual allegations as true, legal conclusions couched as
10 factual allegations are insufficient. *Twombly*, 550 U.S. at 555. Accordingly, Rule 12(b)(6) requires
11 “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action
12 will not do.” *Id.* To survive a motion to dismiss, “a complaint must contain sufficient factual
13 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*,
14 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility
15 when the plaintiff pleads factual content that allows the court to draw the reasonable inference
16 that the defendant is liable for the misconduct alleged.” *Id.* This standard “asks for more than a
17 sheer possibility that a defendant has acted unlawfully.” *Id.* However, pro se pleadings are
18 liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

19 If the court grants a motion to dismiss for failure to state a claim, leave to amend should
20 be granted unless it is clear that the deficiencies of the complaint cannot be cured by
21 amendment. *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). Under Rule 15(a), a
22 court should “freely” give leave to amend “when justice so requires,” and in the absence of a
23 reason such as “undue delay, bad faith or dilatory motive of the part of the movant, repeated
24 failure to cure deficiencies by amendment previously allowed, undue prejudice to the opposing
25 party by virtue of allowance of the amendment, futility of the amendment, etc.” *Foman v. Davis*,
26 371 U.S. 178 (1962).

1 1. *Al-Farouk has not alleged sufficient facts to implicate the individual*
2 *defendants.*

3 Al-Farouk's SAC raises claims against Parven, Nelson, Sewell, Susich, Sarafina, Ceballos,
4 Weiss, Ford, and Lombardo. ECF No. 9 at 3–4. Defendants argue that Al-Farouk "has failed to
5 plead a viable § 1983 claim . . ." ECF No. 25 at 11–12. In her amended response, Al-Farouk uses
6 much space to argue that she has valid claims under the Fourteenth Amendment but makes no
7 argument that her claims against each individual defendant are sufficient. *See* ECF No. 43 at 4–5.

8 Her complaints against Parven in her individual capacity include that, as Administrator
9 of the Office of Administration, Parven was "contacted via email in March of 2021, through the
10 Office of Nevada Congressman Steven Horsford regarding Plaintiff's claim that was unpaid and
11 not denied for any cause. There was no response by her or any representative from her office. . . .
12 Parven acting under color of law, was a party to Plaintiff's legal complaints and pursued legal
13 defense rather than resolution of payment of valid claim." ECF No. 9 at 9. Additionally, "Lynda
14 Parven, Kristine Nelson, and Thomas Sewell in their positions of leadership for Nevada DETR
15 have an oversight and fiduciary duty ensuring the Department is in compliance with both State
16 and Federal laws" and, "acting under color of law . . . repeatedly disregarded unemployment law
17 and statutory mandates as a matter of policy as evidenced by a six-month (6) backlog of current
18 claims reported a February 28, 2023 KLAS TV 8 News Now interview with Director Sewell
19 despite the emergency unemployment assistance ending two (2) years ago in September of
20 2021." *Id.* at 11–12. Even construing her claims against each of these defendants liberally, Al-
21 Farouk has not sufficiently pled her claims against them with specificity. These allegations do
22 not point to any actions that Parven, Nelson, or Sewell took that caused the repeated delays that
23 Al-Farouk faced. Al-Farouk does not connect the dots between Parven receiving an email from
24 Congressman Horsford and any actual authority or oversight that Parven had that resulted in
25 the allegedly unconstitutional delays. That Parven "pursued legal defense" rather than paying Al-
26 Farouk her claimed entitlements does not explain any more about Parven's alleged role in

1 delaying her claims. Likewise, the public interview with Sewell demonstrates only that there
2 was—apparently—a six-month backlog of claims in 2023. Al-Farouk is not pursuing litigation
3 on behalf of all people on the benefit claims waitlist in 2023. In fact, she is not pursuing
4 litigation on behalf of *anybody* on the benefit claims waitlist in 2023. Al-Farouk sought benefits
5 in 2020 and received a final determination in 2021. Her complaint does not provide even bare
6 bones information to support a claim that Parven, Nelson, and Sewell were the cause of the
7 repeated, allegedly unconstitutional delays. In fact, there are no allegations differentiating their
8 individual involvement. Despite Parven and Nelson apparently having the same role at different
9 times, Al-Farouk does not explain their individual roles in relation to the unconstitutional
10 delays she alleges she suffered. Because Al-Farouk has not sufficiently pled her claims against
11 Nelson, Parven, or Sewell, her claims against each are dismissed without prejudice.

12 Al-Farouk’s claims against the other individuals likewise do not pass muster. As to
13 Susich, Al-Farouk’s only allegation is that, as “Chairperson of the Board of Review [he acted]
14 under color of law affirm[ing] the false and baseless appeal denial of Referee Ceballos.” *Id.* at 11.
15 Seeing as this has nothing to do with her claim regarding delays in violation of her due process
16 rights, Al-Farouk’s claims against Susich are dismissed. Because I find that amendment to the
17 claims against Susich would be futile, Al-Farouk’s claims against him are dismissed with
18 prejudice.

19 Al-Farouk’s only statement regarding Sarafina is that “acting under color of law [she]
20 repeated the false and baseless assertions of Referee Ceballos, attorneys for DETR Weiss and
21 Ford, ‘failure to demonstrate attachment to the Nevada Labor Market’ in the decision to deny
22 appeal.” *Id.* Like with Susich, Al-Farouk provides no facts to establish how Sarafina violated Al-
23 Farouk’s Fourteenth Amendment due process right to have her benefits adjudicated and
24 distributed without delays. Therefore, the claims against Sarafina are dismissed. Because I find
25 that amendment to the claims against Sarafina would be futile, Al-Farouk’s claims against her
26 are dismissed with prejudice.

1 For Ceballos, Al-Farouk states that he, “acting under color of law conducted a fraudulent
2 hearing lacking a specific reason for denial to be vetted. Denial was broad and non-specific
3 alleging Plaintiff did not ‘meet the qualifications required by the Coronavirus Aid, Relief, and
4 Economic Security (CARES) Act of 2020 for Pandemic Unemployment Assistance.’” She accuses
5 him of “repeat[ing] the false and baseless assertions of attorneys for DETR Weiss and Ford in his
6 appeal decision of ‘failure to demonstrate attachment to the Nevada Labor Market.’” *Id.* Al-
7 Farouk’s allegations about what occurred during the hearing with Ceballos are irrelevant to any
8 claims about unconstitutional delays in processing her benefits. As discussed previously,
9 because the Fourteenth Amendment due process claims regarding delays are the only claims
10 that remain, Al-Farouk’s claims against Ceballos are dismissed. Because I find that amendment
11 to the claims against Ceballos would be futile, Al-Farouk’s claims against him are dismissed
12 with prejudice.

13 Al-Farouk alleges that Weiss and Ford, as “Attorneys representing DETR ESD acting
14 under color of law defended Plaintiff’s denial of benefits asserting Plaintiff’s due process was not
15 violated despite evidence to the contrary and fabricating a defense with no basis in law.” *Id.* at 9.
16 She asserts that they acted fraudulently in arguing that her failure to demonstrate an attachment
17 to the Nevada labor market warranted denial of benefits, because CARES Act guidelines did not
18 have such requirements, and both Weiss and Ford were aware of that. *Id.* at 10. Like with
19 Ceballos, Al-Farouk’s claims against Weiss and Ford center entirely around her benefit appeals
20 process. There are no allegations that either was the cause of allegedly unconstitutional delays
21 or were involved in those delays whatsoever. Therefore, Al-Farouk has not adequately pled her
22 claims against either defendant, and the claims against both Weiss and Ford are dismissed.
23 Because I find that amendment to the claims against Weiss and Ford would be futile, Al-
24 Farouk’s claims against him are dismissed with prejudice.

25 Al-Farouk’s only allegation specific to Governor Lombardo is that he “as Governor and
26 the Head of State Agencies has an oversight and a fiduciary duty to ensure all Agencies including

1 DETR are in compliance with both State and Federal laws.” *Id.* at 12. Again, Al-Farouk provides
 2 no specific allegations that point to Governor Lombardo having caused the delays,⁸ having been
 3 involved in the benefits disbursement process, or even that he knew of her claims to begin with.
 4 Because her claims against Governor Lombardo lack any specificity, her claims against him are
 5 dismissed.⁹ Further, because Al-Farouk’s due process claims arise from process delays that
 6 occurred prior to Governor Lombardo’s inauguration, I find that amendment would be futile and
 7 dismiss her claim against him with prejudice.

8 Adhering to *DeSoto*, Al-Farouk’s claims against Nelson, Parven, and Sewell are dismissed
 9 without prejudice and with leave to amend. 957 F.2d at 658. Any amended complaint may only
 10 address Al-Farouk’s due process claims. Should Al-Farouk attempt to raise any other issue,
 11 including objections to the denial of her benefits, the court will consider dismissing Al-Farouk’s
 12 amended complaint for failure to comply with this court’s orders. *See Ferdik v. Bonzelet*, 963 F.2d
 13 1258, 1260 (9th Cir. 1992), *as amended* (May 22, 1992) (“[T]he district court may dismiss an action
 14 for failure to comply with any order of the court. (citing Fed. R. Civ. P. 41(b)); *see also Meador v.*
 15 *CCI Tehachapi*, 336 F. App’x 734, 735 (9th Cir. 2009). Al-Farouk’s claims against Susich, Sarafina,
 16 Ceballos, Weiss, Ford, and Lombardo are dismissed with prejudice.

17 **2. *Al-Farouk’s Fourteenth Amendment claim arising out of the delays in***
her process is precluded as to defendants State of Nevada and DETR
ESD.

19 Having already established that Al-Farouk’s Fourteenth Amendment due process claim
 20 based on the delays in process is the only claim that remains, I further find that this remaining
 21 claim is precluded against those parties involved in the prior state action, as well as those in
 22 privity with those parties in the prior action.

23

24 _____
 25 ⁸ The court takes judicial notice that Governor Lombardo was not elected as Governor until 2022 and
 was not sworn-in until January of 2023.

26 ⁹ Because I find that Al-Farouk has not presented sufficient factual material to state her claims against
 the individual defendants, I do not address preclusion, estoppel, or qualified immunity as to these
 defendants.

1 When a party asserts the preclusive effect of a state court judgment, 28 U.S.C. § 1738
 2 requires that a federal court give a state court judgment the same full faith and credit as that
 3 judgment would receive under the law of the state in which the judgment was rendered. *Exxon*
 4 *Mobil Corp.*, 544 U.S. at 293; *Maldonado v. Harris*, 370 F.3d 945, 951 (9th Cir. 2004). Claim
 5 preclusion bars relitigation of all claims that “could have been raised in a prior action.” *Holcombe*,
 6 477 F.3d at 1097. A plaintiff cannot avoid preclusion by merely alleging conduct by the defendant
 7 not alleged in the prior action, or by pleading a new legal theory. *See McClain v. Apodaca*, 793 F.2d
 8 1031, 1034 (9th Cir. 1986). Although claim preclusion is an affirmative defense, a Rule 12(b)(6)
 9 motion is an appropriate motion in which to raise these defenses when the defenses raise no
 10 disputed issues of fact. *See Scott v. Kuhlmann*, 746 F.2d 1377, 1378 (9th Cir. 1984). The “rules of
 11 claim preclusion apply equally to § 1983 actions in federal courts.” *Garcia v. Bostic*, 818 F. App’x
 12 686, 689 (9th Cir. 2020) (citing *Allen v. McCurry*, 449 U.S. 90, 98 (1980)).

13 Under Nevada law, claim preclusion applies when “(1) the parties or their privies are the
 14 same, (2) the final judgment is valid, and (3) the subsequent action is based on the same claims
 15 or any part of them that were or could have been brought in the first case.” *Five Star Capital Corp. v.*
 16 *Ruby*, 194 P.3d 709, 713 (Nev. 2008) (en banc) (citing *Univ. of Nevada v. Tarkanian*, 879 P.2d 1180,
 17 1192 (Nev. 1994), *holding modified by Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 963 P.2d 465 (Nev. 1998)
 18 (“The modern view is that claim preclusion embraces all grounds of recovery that were asserted
 19 in a suit, as well as those that could have been asserted.”)).

20 ***a. Al-Farouk seeks judgment against the same parties or their privies.***

21 To analyze the “same parties or their privies” question, the Supreme Court of Nevada in
 22 *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 321 P.3d 912 (Nev. 2014), adopted the elements of
 23 Section 41 of the Restatement (Second) of Judgments. *Alcantara*, 321 P.3d at 917. Under Section
 24 41 of the Restatement (Second) of Judgments, a person not named in the original action may still
 25 be considered in privity where the party is (b) an individual vested with authority to represent

1 another in litigation, and (d) an official or agency vested by law with the authority to represent
 2 the interests of a person. *See Restatement (Second) of Judgments §§ 41(1)(b), 41(1)(d) (1982).*

3 In her Nevada administrative appeal, Al-Farouk maintained her administrative appeal
 4 against the ESD, Lynda Parven in her official capacity, and Thomas Susich in his official
 5 capacity.¹⁰ *Al-Farouk v. State of Nevada*, No. A-22-857898-J (Nev. Dist. Ct., Sept. 3, 2022). In the
 6 SAC, Al-Farouk sues: DETR ESD; Lynda Parven; Thomas Susich; Kristine K. Nelson;
 7 Christopher Sewell; Jen Sarafina; Jorge Ceballos; Todd Weiss; Attorney General Aaron Ford;
 8 Governor Joe Lombardo; and the State of Nevada. ECF No. 9 at 6, 12–15. For the reasons
 9 described above, Al-Farouk cannot maintain this action against Parvin, Nelson, Sewell, Susich,
 10 Lombardo, Ford, Weiss, Sarafina, or Ceballos. Therefore, her only claims remaining are those
 11 against the State of Nevada and the DETR ESD.

12 ESD, DETR ESD, and the State of Nevada are on equal footing for purposes of privity in
 13 claim preclusion. *See Cohen v. Whitley*, 2021 WL 1553814, at *6 (D. Nev. Apr. 20, 2021) (noting that
 14 DETR is an arm of the state of Nevada); *Hamer v. Nev. Bureau of Vocational Rehab. Emp. & Training*,
 15 2016 WL 721369, at *2 (D. Nev. Jan. 21, 2016) (describing a branch of DETR as an “arm of the
 16 state”). Therefore, this action is maintained against the same defendants or their privies as the
 17 defendants in Al-Farouk’s administrative appeal to the state court.

18 ***b. Final judgment in the state case was valid.***

19 For claim preclusion purposes, adjudication on the merits is a sufficient though not
 20 necessary condition for a determination that a valid final judgment exists. *Weddell v. Sharp*, 350
 21 P.3d 80, 83 n.1 (Nev. 2015). Here, Al-Farouk’s petition was denied, and the state court judge
 22 dismissed the case with prejudice.

23 ¹⁰ I note that, although I have already determined that Al-Farouk has not sufficiently stated her claims
 24 against Parven or Susich, neither Parven nor Susich would automatically be considered the “same
 25 parties.” They were parties in their official capacities in state administrative appeal but here, Al-Farouk
 26 maintains her claims against them in their individual capacities. *See Giebel v. Sylvester*, 5 F. App’x 622, 624
 (9th Cir. 2001) (“Because the individual defendants in the federal action . . . were not sued in their
 individual capacities in the state court action, res judicata does not preclude Giebel’s federal action
 against them . . . in their individual capacities.”).

1 In her amended response to the motion, Al-Farouk states:

2 I view every action taken once the Department was made aware of its negligence
3 and did not immediately pay the claim as illegitimate and a violation of the law.
4 Including continued processing of the claim without payment, illegitimate. The
5 requirement of the Judge that I complete all DETR administrative instruments,
6 illegitimate and akin to requiring a victim to return to their abuser. The appeals
7 hearing attended under duress after significant delay and in the scheduling of
8 previous appeals, illegitimate on its face and in context of looking for a reason to
9 deny, without any actual issue to vet. The Judicial Review was illegitimate, where
10 the Judge went beyond the stated limitation, took instruction from the Defendant,
11 and signed off on an Order for Dismissal totally different from the stated reason for
12 dismissal in the transcript of the hearing.
13

9 ECF No. 43 at 15. However, Al-Farouk's personal objections and protests to the judicial
10 procedure prescribed by law are irrelevant. The deadline for Al-Farouk to appeal the decision of
11 the state court judge was "30 days after written notice of entry of the judgment or order
12 appealed from is served." Nev. R. App. P. 4(a). Al-Farouk admits that she did not appeal the
13 ruling of the state judge. ECF No. 35 at 4. Al-Farouk states that

14 she understood the next step after the Judicial Review was to return to the Court
15 for the Writ Petition. This is what Plaintiff was told by Judge and should be
16 reflected in the transcript of the last hearing. The Writ Petition confusing
17 dismissal coming before the conclusion of the Judicial Review, left Plaintiff
18 confused as to the next steps. The Plaintiff did not understand this to be an option
19 and frankly was too emotionally exhausted to pursue further litigation, especially
20 what is now known to be the deadline for filing.
21

19 *Id.* Having reviewed the transcript of the hearing, I cannot find anywhere that Judge Albertson
20 even so much as indicated to Al-Farouk what the next steps were. In choosing to pursue her
21 claims pro se, Al-Farouk is still subject to the same rules of procedure as litigants who have
22 counsel. *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987); *Hooper v. State*, 2009 WL 1471388, at *1
23 (Nev. 2009) (explaining that pro se litigant "would be held to the same rules and procedures as
24 an attorney"). Even if Al-Farouk was incorrectly informed (or incorrectly assumed), this is not
25 the basis of Al-Farouk's claim and it is not the place of this court to adjudicate whether Al-
26 Farouk is entitled to have her state court appeal deadline tolled. It is uncontested that Al-

1 Farouk had the right to appeal the state court's determination. *See* Nev. Rev. Stat. § 233B.150
2 ("An aggrieved party may obtain a review of any final judgment of the district court by appeal to
3 the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court
4 pursuant to Section 4 of Article 6 of the Nevada Constitution. The appeal shall be taken as in
5 other civil cases."). Because Al-Farouk failed to do so, Judge Albertson's decision, as reflected in
6 the hearing record and the order, is valid and final.

c. *This action is based on the same claims that were or could have been brought in Nevada state court.*

9 In her opening brief in support of judicial review to the Nevada district court, Al-Farouk
10 repeatedly referenced claims arising out of Fourteenth Amendment due process, pointing to the
11 delays in particular as one of the focal points of her claims. ECF No. 26-3 at 7, 9, 11, 13, 14, 16, 18.
12 She then sought to discuss the issue during the hearing before Judge Albertson. *See* ECF No. 35-1
13 at 49. I find that this issue was raised at the state court level. However, Judge Albertson told Al-
14 Farouk:

15 I understand your frustration but what's before me today is a petition for judicial
16 review, where I review the decision and decide it . . . I don't get to review some of
17 the other stuff that you put in front of me. That's . . . maybe you and Ms. Sarafina
18 feel otherwise but it's my position that I'm very limited on these petitions for
judicial reviews, where essentially I can remand it for some kind of reason, which
means I sent it back, okay, and I am to state the reason for doing that. . . . I don't
think this was a [sic] effort to deny you rights but even if it was, . . . I don't think

19 that I'm the proper avenue to explore that. I don't think a petition for judicial
20 review is the proper avenue to explore that. But I'm happy to let you put whatever
you want to put on the record.

21 *Id.* at 49–50. Neither Sarafina nor Al-Farouk disagreed with Judge Albertson’s statement. *See id.*
22 at 50. The issue was not brought up again and due process was not mentioned in the order the
23 judge ultimately signed.

24 According to the laws of the State of Nevada, Al-Farouk's due process claims should have
25 been considered in the state court. When a state court is reviewing an agency's decision, "[i]n
26 cases concerning alleged irregularities in procedure before an agency that are not shown in the

1 record, the court may receive evidence concerning the irregularities.” Nev. Rev. Stat. § 233B.135.

2 Additionally,

3 [t]he court may remand or affirm the final decision or set it aside in whole or in
4 part if substantial rights of the petitioner have been prejudiced because the final
decision of the agency is:

- 5 (a) In violation of constitutional or statutory provisions;
- 6 (b) In excess of the statutory authority of the agency;
- 7 (c) Made upon unlawful procedure;
- 8 (d) Affected by other error of law;
- 9 (e) Clearly erroneous in view of the reliable, probative and substantial
evidence on the whole record; or
- 10 (f) Arbitrary or capricious or characterized by abuse of discretion.

13 *Id.* at 233B.135(3) (emphasis added). Al-Farouk argued repeatedly that the process that
14 ultimately led to the denial of benefits amounted to an unconstitutional deprivation of her right
15 to due process. This may be considered “irregularities in procedure before [the] agency,” or, in
16 the alternative, argument that the final agency decision was “in violation of constitutional . . .
17 provisions,” “made upon unlawful procedure,” or, at the very least “affected by other error of
18 law[.]” Nev. Rev. Stat. § 233B.135. Al-Farouk’s statements, between her opening brief and her
19 oral argument, were unequivocal that she sought for the district court to review the record for
20 violations of her Fourteenth Amendment due process rights. Based on a reading of the Nevada
21 law, it appears the state district judge erred in refusing to consider Al-Farouk’s constitutional
22 arguments.

23 The Ninth Circuit has clearly ruled that constitutional claims not brought on judicial
24 review of administrative rulings as permitted under section 233B.135(3)(a) are precluded. See
25 *Holcombe v. Hosmer*, 477 F.3d 1094, 1099–100 (9th Cir. 2007) (“Holcombe’s allegations concerning
26 her § 1983 claims are based on the same set of facts as her claims of wrongful termination

1 litigated before the Nevada State Personnel Commission and affirmed by the Nevada state court.
2 Therefore, under Nevada law, her § 1983 claims are precluded, and the district court properly
3 dismissed Holcombe’s claims.”). Here, because I find that Al-Farouk *did* raise these issues on
4 judicial review at the district court, this is not in dispute.

5 However, the question remains whether the district court’s error, and Al-Farouk’s failure
6 to *appeal* the erroneous ruling, still makes her claims ones that were brought or could have been
7 brought in state court. The Ninth Circuit looked at a similar situation in *Clark v. Yosemite*
8 *Community College District*, 785 F.2d 781 (9th Cir. 1986). Reviewing the record, the Ninth Circuit
9 explained that “[w]hen the state judge asked whether many of [the plaintiff’s] claims were
10 inappropriate for a mandamus action and might even be beyond the jurisdiction of the court in a
11 mandamus proceeding, the [defendant], not surprisingly, agreed.” *Id.* at 788 n.8. This was an
12 erroneous decision by the state judge. *See id.* The plaintiff’s “counsel argued against the court’s
13 erroneous surmise but did not press for a ruling.” *Id.* According to the Ninth Circuit, if the
14 plaintiff’s counsel “had, and assuming that the court had continued in its misperception of the
15 law, [the plaintiff] could have appealed the ruling and had it corrected in the state appellate
16 court.” *Id.* “Instead, [the plaintiff] [sought] to assert in federal court the same cause of action that
17 the state court had left unresolved.” *Id.* As the Ninth Circuit ultimately held: “The state court’s
18 failure to address the remainder of the cause of action involving interference with [the
19 plaintiff’s] teaching duties is attributable to [the plaintiff’s] failure to move for a definite ruling
20 or to appeal the judgment.” *Id.* at 788.

21 Although not identical, the context around Al-Farouk’s Fourteenth Amendment claims
22 in state court is analogous. Like in *Clark*, the state judge refused to hear Al-Farouk’s claims due
23 to an error of law. In *Clark*, the plaintiff’s counsel pushed back, but here, the state judge
24 appeared to leave the door open for either party, including Al-Farouk, to interject and correct
25 her. *See* ECF No. 35-1 at 49–50 (“[M]aybe you and Ms. Sarafina feel otherwise but it’s my
26 position that I’m very limited on these petitions for judicial reviews . . .”). The Ninth Circuit

1 states that either pushing for a ruling on the issue or seeking appeal would have been
2 appropriate remedies. *Clark*, 785 F.2d at 788. Here, Al-Farouk could have pushed back and could
3 have appealed but did neither.

4 Al-Farouk avers that she did not know she could appeal and gives no indication from her
5 filings that she understood the district judge's statements about being unable to hear the
6 Fourteenth Amendment claims to be in error. She also acknowledges her exhaustion with this
7 process. ECF No. 35 at 4. As stated previously, though, pro se litigants are subject to the same
8 rules and procedure as litigants with counsel. *King*, 814 F.2d at 567; *Hooper*, 2009 WL 1471388, at
9 *1. I find, therefore, that Al-Farouk's claim was brought up in front of the state court judge, and,
10 although it was wrongfully dismissed, it could have been brought on an appeal. Because that
11 deadline to appeal has now passed, Al-Farouk's claims against Nevada and DETR ESD are
12 precluded. Because the claims are precluded against these defendants, amendment would be
13 futile and therefore they are dismissed with prejudice.

14 I do, however, acknowledge the difficulties Al-Farouk has faced attempting to navigate
15 the legal process pro se. She has yet to receive an explanation as to why her PUA claims were
16 delayed for so long. The procedural morass Al-Farouk has entered—between the writ of
17 mandamus, the administrative appeals process, the state court judicial review, and the present
18 action—would be difficult for even experienced lawyers. This recognition does not and cannot
19 change my application of the law to the facts of this case.

20 **III. Conclusion**

21 IT IS HEREBY ORDERED that defendants' motions to dismiss [ECF No. 25] is
22 **GRANTED**.

23 IT IS FURTHER ORDERED that all Al-Farouk's claims against defendants that arise out
24 of the allegedly wrongful adjudication of her PUA benefits are **DENIED** with prejudice.

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1 IT IS FURTHER ORDERED that Al-Farouk's Fourteenth Amendment due process
2 claims against defendants State of Nevada and DETR ESD that arise out of the delays in the
3 processing of her benefits decisions are DENIED with prejudice.

4 IT IS FURTHER ORDERED that Al-Farouk's Fourteenth Amendment due process
5 claims against defendants Ceballos, Susich, Sarafina, Ford, Weiss, and Lombardo are DENIED
6 with prejudice.

7 IT IS FURTHER ORDERED that Al-Farouk's Fourteenth Amendment due process
8 claims against defendants Nelson, Parven, and Sewell are DENIED without prejudice and with
9 leave to amend. If Al-Farouk chooses to amend, a third amended complaint must be filed by
10 May 8, 2025. Any amended complaint may only address Al-Farouk's due process claims. Should
11 Al-Farouk attempt to raise any other issue, including objections to the denial of her benefits, the
12 court will consider dismissing Al-Farouk's amended complaint for failure to comply with this
13 court's orders. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992), as amended (May 22, 1992)
14 ("[T]he district court may dismiss an action for failure to comply with any order of the court."
15 (citing Fed. R. Civ. P. 41(b)).

16 IT IS FURTHER ORDERED that defendants' request for judicial notice [ECF No. 26] is
17 GRANTED.

18 IT IS FURTHER ORDERED that defendant Ceballos's motion for joinder [ECF No. 33]
19 is GRANTED.

20 Dated: April 17, 2025

21 
22 Cristina D. Silva
23 United States District Judge
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